

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ARBEN GROUP, LLC,

Plaintiff,

-against-

HOOVER TREATED WOOD PRODUCTS, INC.,

Defendant.

-----X  
HOOVER TREATED WOOD PRODUCTS, INC.,

Defendant/Third-Party Plaintiff,

-against-

INTERNATIONAL PAPER COMPANY,

Third-Party Defendant.  
-----X

ANSWER OF THIRD-PARTY  
DEFENDANT INTERNATIONAL  
PAPER COMPANY

07 CV 11472 (CLB)

Third-party defendant International Paper Company, by their attorneys Clark,  
Gagliardi & Miller P.C., as and for its answer alleges as follows:

**PARTIES**

1. Denies knowledge or information sufficient to form a belief as to the allegations designated in paragraphs "1" and "3" thereof.
2. Denies knowledge or information sufficient to form a belief as to the allegations designated in paragraphs "5" and "6" and respectfully refers all questions of law to the Court.

**ALLEGATIONS COMMON TO ALL COUNTS**

3. Denies knowledge or information sufficient to form a belief as to the allegations designated in paragraphs "7", "8" and "13" thereof.

4. Denies knowledge or information sufficient to form a belief as to the allegations designated in paragraphs "9", "10", "11" and "12" and refers the Court to the complaint for the allegations therein.

5. Denies each and every allegation contained in the paragraph designated "14" thereof.

6. International Paper Company admits that Hoover has notified International Paper Company of Arben's claims but denies International Paper Company has any obligations to plaintiff or third-party plaintiff.

**COUNT I**  
**CONTRIBUTION**

7. Third-party defendant repeats, reiterates and realleges each and every answer to paragraphs "1" through "15" of third-party plaintiff's complaint insofar as such allegations are repeated, reiterated and realleged in paragraph "16" of the complaint.

8. Denies each and every allegation contained in the paragraph designated "17" thereof.

**COUNT II**  
**CONTRIBUTION**

9. Third-party defendant repeats, reiterates and realleges each and every answer to paragraphs "1" through "15" and "17" of third-party plaintiff's complaint insofar as such allegations are repeated, reiterated and realleged in paragraph "18" of the complaint.

10. Denies each and every allegation contained in the paragraph designated "19" thereof.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

11. Some or all of plaintiff's and third-party plaintiff's claims are barred by the learned intermediary and/or sophisticated user doctrines. At all relevant times herein, plaintiff and third-party plaintiff were in the position of sophisticated purchasers, fully knowledgeable and informed with respect to the risks and benefits of the Plywall ® Panels.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

12. The injuries, damages, or losses alleged in the third-party complaint, none being admitted, were caused in whole or in part by the negligence of the plaintiff and/or third-party plaintiff and/or others, over whom International Paper Company exercised no control, had no opportunity to anticipate or right to control, and with whom International Paper Company had no legal relationship by which liability could be attributed to it because of the actions of the plaintiff and/or third-party plaintiff and/or others, which by comparison was far greater than any conduct alleged as to International Paper Company.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

13. Plaintiff's and/or third-party plaintiff's alleged loss, damage, injury, harm, expense, diminution, or deprivation alleged, if any, was caused in whole or in part by plaintiff's and/or third-party plaintiff's failure to exercise reasonable care and diligence to mitigate plaintiff's and/or third-party plaintiff's alleged damages.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

14. Any breach of warranty claims by plaintiff and/or third-party plaintiff are barred because plaintiff and/or third-party plaintiff failed to give timely notice of any alleged breach of warranty; plaintiff and/or third-party plaintiff did not reasonably rely upon any alleged warranty; plaintiff and/or third-party plaintiff failed to satisfy all conditions precedent or subsequent to the enforcement of such warranty; and the warranty was appropriately disclaimed, excluded or modified.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

15. International Paper Company alleges that plaintiff and/or third-party plaintiff were fully informed of the risks of the use of the Plywall ® Panels which are the subject of this action.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

16. The injuries or damages allegedly sustained by plaintiff and/or third-party plaintiff can be attributed to several causes and accordingly should be apportioned among the various causes according to respective contribution of each such cause to the harm sustained, if any. If any liability is found against International Paper Company, then said liability will constitute 50% or less of the total liability assigned to all persons liable, and as such, the liability of International Paper Company to third-party plaintiff for non-economic loss shall be limited, and shall not exceed International Paper's equitable share.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

17. Any verdict or judgment rendered against International Paper must be reduced by those amounts that have been, or will, with reasonable certainty, replace or indemnify plaintiff and/or third-party plaintiff in whole or in part, for any past or future claimed economic loss, from any collateral source such as insurance.

**AS AND FOR A COUNTERCLAIM AGAINST  
PLAINTIFF ARBEN GROUP, LLC AND  
THIRD-PARTY PLAINTIFF HOOVER TREATED  
WOOD PRODUCTS, INC., THIRD-PARTY DEFENDANT  
INTERNATIONAL PAPER COMPANY ALLEGES AS FOLLOWS:**

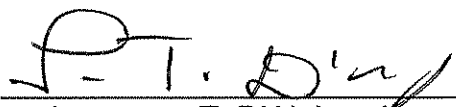
18. If plaintiff and/or third-party plaintiff sustained any damages as alleged in the complaint and third-party complaint, those damages were caused in whole or in part by the culpable conduct of plaintiff and/or third-party plaintiff. Should third-party defendant International Paper Company be held responsible for any damages in this litigation, International Paper Company shall be entitled to contribution from plaintiff and/or third-party plaintiff for their apportioned shares of responsibility and/or indemnity by reason of contract, if any, or by virtue of common law.

WHEREFORE, third-party defendant International Paper Company demands judgment dismissing the third-party complaint, or if third-party defendant is held liable to third-party plaintiff, judgment on its counterclaim with costs, disbursements and attorney's fees and such other and further relief as may seem just and equitable.

DATED: White Plains, NY  
July 28, 2008

Yours, etc.,

CLARK, GAGLIARDI & MILLER P.C.

By:   
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(LTD - 7155)

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